



**EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 4111158/2018**

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**Held in Glasgow on 20 September 2018**

**Employment Judge: Mary Kearns**

10 **Mr Matthew Law**

**Claimant  
In person**

**Phoenix Security (UK) Limited**

**Respondent  
Written representations**

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**JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The Judgment of the Employment Tribunal was that the respondent made unlawful  
20 deductions from the claimant's wages contrary to Section 13 of the Employment  
Rights Act 1996. The respondent is ordered to pay to the claimant the sum of  
**£395.07 (Three Hundred and Ninety Five Pounds and Seven Pence).**

**REASONS**

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1. The claimant was employed by the respondent as a security guard from 17  
January until 16 June 2018. He presented an application to the Employment  
Tribunal on 5 July 2018 in which he claimed unlawful deductions from his  
wages for the full period of his employment.

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2. The respondent presented a response to the claim and their representative  
sent a written submission to the hearing but did not attend for economic  
reasons.

35 **Evidence**

**E.T. Z4 (WR)**

3. The claimant gave evidence on his own behalf and lodged a number of documents, including screen shots of text conversations he had had with Claire Kilduff including one on 27 February 2018 in which Ms Kilduff acknowledged that the claimant's rate of pay at McDonalds was and should be £12.50 per hour. I accepted the claimant's evidence.

### **Findings in Fact**

4. The following material facts were found to be proved:-

5. The respondent is a company which supplies security personnel to various clients including bars, restaurants and night clubs. The claimant began working for the respondent as a security guard on 17 January 2018 doing weekend shift work. Prior to the start of his employment the claimant was interviewed on the telephone by the respondent's area supervisor Claire Kilduff. He had originally applied online for a post at the James Tassie Bar at an hourly rate of £12.50. At the end of the telephone interview Ms Kilduff told him that that post had now been filled but that she could offer him a job in a different venue at the same hourly rate. The claimant was offered the post of Head Doorman at McDonalds Argyle Street at the rate of £12.50 per hour. He accepted the offer at that rate.

6. The claimant's first shift was on or around Saturday 20 January 2018. Ms Kilduff told the claimant that McDonalds were not happy with their current Head Doorman. She asked the claimant to go into the venue and evaluate the team. The claimant did so and suggested to Ms Kilduff that instead of removing the Head Doorman immediately he could work alongside him for a couple of shifts. It was agreed that for the shifts during which the claimant worked alongside the Head Doorman he would be paid the lower 'steward' rate of £9.50 per hour. Both Ms Kilduff and her supervisor Julie Gibson confirmed to the claimant in several text conversations between 11 and 27 February 2018 that he would be paid the initial steward rate of £9.50 per hour when working alongside the head doorman at McDonalds but that this would rise to a rate of £12.50 per hour when he became head doorman himself. The

claimant became head doorman at McDonalds in the third week of his employment.

- 5 7. On 11 February the claimant texted Ms Kilduff at 22:04 and asked *“Still need me for the 12 – 4 tonight at taco bell, Sauchiehall street? All good if you do but will it be at £9.50 or £12.50 just for my own records?”* Ms Kilduff replied at 22:17: *“Yes we do. It’s £9.50 you only get the higher rate in McDonald’s Argyle Street”*. On 20 February 2018 the claimant texted Ms Kilduff’s phone. He received a reply from Ms Gibson saying that Ms Kilduff was on holiday. Ms Gibson asked: *“What’s the issue with your pay?”* The claimant telephoned and explained that he had been paid at the rate of £8.48 and not the agreed £12.50. Ms Gibson then responded by text: *“Ohh sorry, it was paid at 8.48 instead of 9.50 and 12.50 thereafter. I sent pictures to Claire and she said she would sort it with payroll.”* The next week the claimant was again paid at £8.48 per hour. He texted Ms Kilduff at 17:10 on 27 February 2018 in the following terms: *“I thought the HD rate was 12.50, and taco bell was 9.50 I don’t understand how the math works out as at those dates the gross should be £438 not £419.78. Also when is the back pay going to be processed?”* Ms Kilduff replied at 17:13: *“Taco Bell is £9 it’s only McDonalds that £9.50. I’ll contact payroll tomorrow cause that looks like it isn’t £12.50. But it is and should be.”* After some more texts about the claimant contacting payroll Ms Kilduff said at 17:15: *It’s fine I have a meeting with Julie tonight I’ll get her to look at that pay rate. I’ll deal with it as it’s more anrate [sic] query than pay query. But the hd rate for that venue is set at £12.50.”*
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- 30 8. The claimant got his first pay slip on 2 February 2018 and was paid weekly thereafter. For the first two weeks he was paid at the correct rate of £9.50 per hour. With effect from the 16 February payslip he ought to have been paid £12.50 per hour as head doorman. The claimant’s pay, rates and shortfalls are set out in the following table:

Pay date	Actual pay	Correct pay	Difference	Hours worked	Hourly rate paid	Correct hourly rate
2/2/18	£113.97	£114.00	£0.03	12	£9.475	£9.50
9/2/18	£190.04	£190.00	-£0.04	20	£9.502	£9.50
16/2/18	£304.18	£400.00	£95.82	32	£9.50	£12.50
23/2/18	£304.18	£400.00	£95.82	32	£9.50	£12.50
2/3/18	£383.81	£400.00	£16.19	32	£11.99	£12.50
9/3/18	£383.81	£400.00	£16.19	32	£11.99	£12.50
16/3/18	£263.86	£275.00	£11.14	22	£11.99	£12.50
23/3/18	£383.81	£400.00	£11.14	32	£11.99	£12.50
30/3/18	£527.72	£550.00	£22.28	44	£11.99	£12.50
6/4/18	£383.81	£400.00	£16.19	32	£11.99	£12.50
13/4/18	£383.81	£400.00	£16.19	32	£11.99	£12.50
20/4/18	£383.81	£400.00	£16.19	32	£11.99	£12.50
27/4/18	£383.81	£400.00	£16.19	32	£11.99	£12.50
4/5/18	£198.02	£275.00	£76.98	22	£9.00	£12.50
Adjustment	Paid	4/5/18	-£66.00			
11/5/18	£198.02	£275.00	£76.98	22	£9.00	£12.50
18/5/18	£119.84	£125.00	£5.16	10	£11.99	£12.50
25/5/18	£263.86	£275.00	£11.14	22	£11.99	£12.50
Adjustment	Paid	25/5/18	-£66.00			
1/6/18	£263.86	£275.00	£11.14	22	£11.99	£12.50
8/6/18	£263.86	£275.00	£11.14	22	£11.99	£12.50
15/6/18	£323.80	£325.00	£1.20	26	£12.45	£12.50
<b>Total deficit</b>			<b>£395.07</b>			

9. The claimant's employment terminated on 16 June 2018. He received two pay credit adjustments of £66. Allowing for these the total difference between the amount he was paid and the amount properly payable to him under the contract was £395.07 and this is the sum awarded.

**Discussion and Decision**

Claim for Unauthorised Deductions from Wages

5 10. Section 13 Employment Rights Act 1996 gives workers the right not to suffer unauthorised deductions from their wages. Under section 13(3) a deduction occurs where *“the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion.”*

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11. Section 23 provides for the right of a worker to bring a complaint to an Employment Tribunal in respect of an unauthorised deduction from his wages or a series of such. Having heard the claimant’s evidence and examined the text evidence he produced of his conversations with Ms Kilduff and her supervisor I was satisfied that the claimant was offered the job of head doorman at the rate of £12.50 per hour. He worked for the first two weeks alongside another doorman and was correctly paid the ordinary steward rate of £9.50 per hour for those weeks. However, thereafter he was paid at rates lower than £12.50 per hour as shown on the table above. I did consider the written submission helpfully provided by the respondent’s agents but it did not fully take into account the information on the claimant’s pay slips, all of which he provided to me. I have also concluded that since the claimant is no longer employed by the respondent, the payment should be made gross of tax and National Insurance. The claimant will then require to account for these to HMRC.

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Employment Judge: Mary Kearns  
Date of Judgment: 28 September 2018  
Entered in register: 03 October 2018  
and copied to parties

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